

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY	)	MDL No. 1456
AVERAGE WHOLESALE PRICE	)	
LITIGATION	)	CIVIL ACTION: 01-CV-12257-PBS
	)	
THIS DOCUMENT RELATES TO ALL	)	Judge Patti B. Saris
CLASS ACTIONS	)	
	)	

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**NOTICE OF ERRATA**

TO ALL PARTIES AND THEIR COUNSEL

PLEASE TAKE NOTICE THAT the reference to November 1, 2006 on page 4 of Plaintiffs' Memorandum in Opposition to Amgen Inc.'s Motion for Protective Order Relating to Plaintiffs' Rule 30(b)(6) Deposition Notice Regarding Sales and Marketing (Dkt. No. 2527) and page 2 of the Declaration of Robert F. Lopez in Opposition to Amgen Inc.'s Motion for Protective Order (Dkt. No. 2528) filed on May 8, 2006, was incorrect. The correct date should be November 1, 2005. Plaintiffs have attached the corrected pages.

DATED: May 9, 2006

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to be resolved. (Lopez Ex. B.) But out of an abundance of caution, in light of Amgen's contradictory actions, plaintiffs file this memorandum.

**B. Argument**

According to Amgen, the Court should permit it to avoid plaintiffs' 30(b)(6) request because plaintiffs served it after the discovery cutoff. Amgen argues that “[t]he areas of inquiry set out in the April 19 notice are in no way dependent upon plaintiffs' ongoing review of Amgen's documents,” and that instead, “the areas included in the notice are broad and general, and could just as easily have been noticed and pursued at any time prior to the close of discovery.” (Amgen's Motion for Protective Order at p. 2.) Amgen is wrong.

Amgen's bland reference to “plaintiffs' ongoing review of Amgen's documents” does not begin to suggest the context surrounding plaintiffs' service on April 19, 2006 of the 30(b)(6) notice in question. As plaintiffs have advised the Court, Amgen did not produce a single document (as distinct from data) until *November 1, 2005*. On that date, only a short time before the discovery cutoff, Amgen began a slow-rolling production that it would proclaim to be “substantially complete” on January 30, 2006 with the production of less than 44,000 pages of documents. (Lopez Decl., ¶ 5.) (The unreal notion that Amgen's production was anywhere near “substantially complete” at the end of January 2006 is belied by recent events, wherein Amgen has produced almost a half-million more pages of salesperson documents, with the promise that hundreds of thousands of additional pages of salesperson documents are on the way—and these are only one category of documents: salesperson documents. (Lopez Decl., ¶ 6.))

In fact, due to Amgen's dragging of its feet and its transparent strategy to run out the clock on discovery, discovery as to Amgen is, unfortunately, ongoing. Amgen's continued resistance to production in response to various categories in plaintiffs' Omnibus Requests for

that Amgen apparently came to espouse following its counsel's April 28, 2006 letter to plaintiffs. I sent an e-mail message to Amgen's counsel this morning asking if plaintiffs needed to respond formally to Amgen's motion, but as of the writing of this declaration, counsel has yet to respond.

5. As plaintiffs have advised the Court previously, Amgen did not produce a single document (as distinct from data) until *November 1, 2005*. On that date, only a short time before the discovery cutoff, Amgen began a slow-rolling production that it would proclaim to be "substantially complete" on January 30, 2006 with the production of less than 44,000 pages of documents.

6. The unreal notion that Amgen's production was anywhere near "substantially complete" at the end of January 2006 is belied by recent events, wherein Amgen has produced almost a half-million more pages of salesperson documents, with the promise that hundreds of thousands of additional pages of salesperson documents are on the way—and these are only one category of documents: salesperson documents.

7. Due to Amgen's dragging of its feet and its transparent strategy to run out the clock on discovery, discovery as to Amgen is, unfortunately, ongoing. Amgen's continued resistance to production in response to various categories in plaintiffs' Omnibus Requests for Production, coupled with plaintiffs' review of Amgen's documents to-date, suggested the need for discovery as to Amgen's sales and marketing practices relative to its drugs here at issue.

8. Attached as Exhibit A is a true and correct copy of a letter dated April 28, 2006, from counsel for Amgen to me.

9. Attached as Exhibit B is a true and correct copy of an e-mail string between counsel for Amgen and me, which begins on May 3, 2006.

**CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **NOTICE OF ERRATA** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on May 9, 2006, a copy to LexisNexis File & Serve for Posting and notification to all parties.

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